

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



January 27, 2004

Agenda ID 3228  
Quasi-Legislative

**TO: PARTIES OF RECORD IN RULEMAKING 01-08-028**

**RE: NOTICE OF AVAILABILITY OF DRAFT DECISION ON INTERIM OPINION  
ADOPTING FUNDING FOR 2003-04 ENERGY EFFICIENCY PROGRAMS AND  
ADDRESSING CERTAIN PETITIONS AND MOTIONS**

Consistent with Rule 2.3(b) of the Commission's Rules of Practice and Procedure, I am issuing this Notice of Availability of the above-referenced draft decision. The draft decision was issued by Administrative Law Judge (ALJ) Malcolm on January 27, 2004. An Internet link to this document was sent via e-mail to all the parties on the service list who provided an e-mail address to the Commission. An electronic copy of this document can be viewed and downloaded at the Commission's Website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). A hard copy of this document can be obtained by contacting the Commission's Central Files Office [(415) 703-2045].

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Consistent with the service procedures in this proceeding, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Kim Malcolm at [kim@cpuc.ca.gov](mailto:kim@cpuc.ca.gov). Service by U.S. mail is optional, except that hard copies should be served separately on ALJ Malcolm, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. In addition, if there is no electronic address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall

immediately arrange for alternate service (regular U.S. mail shall be the default, unless another means – such as overnight delivery is mutually agreed upon). The current service list for this proceeding is available on the Commission’s Web page, [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ MALCOLM** (Mailed 1/27/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**INTERIM OPINION ADOPTING FUNDING FOR 2003-04  
ENERGY EFFICIENCY PROGRAMS AND ADDRESSING CERTAIN  
PETITIONS AND MOTIONS**

**I. Summary**

This decision approves \$67 million in funding for energy efficiency programs for a two-year period beginning in 2004. The energy efficiency programs for which we approve funding in this order are in addition to those funded in Decision (D.) 03-12-060. In that order, we disbursed \$752 million to several companies, government agencies and organizations to undertake a variety of programs offered to residential, commercial and industrial customers during 2004 and 2005. These programs are funded through the "public goods charge" (PGC) funds and revenues set aside for energy procurement by electric utilities.

We issue this second decision consistent with D.03-12-060, which held back \$67 million in PGC funding in order to reevaluate several types of energy efficiency program proposals that parties presented in fall 2003 for the 2004-05 funding cycle.

Like the programs approved in D.03-12-060, the programs we fund today build on past successes, seek to incorporate new ideas and technologies, develop

a more integrated approach to energy resource procurement and complement the state's Energy Action Plan. These programs are funded as part of a larger effort to reduce the per capita use of electricity in California, reduce costs, and improve the electric system's reliability for California customers.

The funding allocated in today's order is for the programs shown in Attachment 1.

We also terminate the "bridge funding" we approved to permit the continuation of 2003 programs through the date we allocate the remaining \$67 million. Any amount of bridge funding spent on programs we approve in this decision will be incorporated as part of each program budget authorized for those programs in 2004-05.

Finally, we resolve several outstanding petitions and motions concerning various aspects of our energy efficiency programs.

## Allocation of 2004-2005 PGC Funds in D.03-12-060

	PG&E	SCE	SDG&E	SCG	TOTAL
2004 and 2005 Electric PGC [1]	\$215,180,000	\$180,000,000	\$64,800,000	-	459,980,000
2004 and 2005 Gas Public Purpose Program (PPP) Funds	\$25,776,000	-	\$11,000,000	\$53,990,000	90,766,000
Unspent/Uncommitted Energy Efficiency Budget (1998-2002) [2]	\$15,444,362	\$1,516,272	\$389,739	\$2,183,000	19,533,373
Estimated Interest for Electric PGC Funds/Gas PPP Funds	\$1,531,938	\$1,176,000	\$556,281	(\$297,072)	2,967,147
<b>TOTAL PGC FUNDS AVAILABLE</b>	<b>\$257,932,300</b>	<b>\$182,692,272</b>	<b>\$76,746,020</b>	<b>\$55,875,928</b>	<b>\$573,246,520</b>
Investor-Owned Utilities Statewide Programs	\$127,943,329	\$89,800,000	\$37,641,911	\$26,222,908	\$281,608,148
Utility Local Programs	\$3,245,656	\$10,001,439	\$4,278,000	\$4,755,206	\$22,280,301
Utility Partnership Programs	\$23,478,022	\$14,384,139		\$3,752,202	\$41,614,363
<b>Total Utility Programs</b>	<b>\$154,667,007</b>	<b>\$114,185,578</b>	<b>\$41,919,911</b>	<b>\$34,730,316</b>	<b>\$345,502,812</b>
Non-utility Programs	\$53,746,992	\$28,129,171	\$10,568,750	\$6,944,486	\$99,389,399
Reserved fee for Utility Contract Administration for Non-Utility programs (5%)	\$2,687,350	\$1,406,459	\$528,438	\$347,224	\$4,969,470
<b>Total Non-Utility Programs</b>	<b>\$56,434,342</b>	<b>\$29,535,630</b>	<b>\$11,097,188</b>	<b>\$7,291,710</b>	<b>\$104,358,869</b>
<b>Total Statewide Marketing and Outreach</b>	<b>\$17,965,588</b>	<b>\$13,419,506</b>	<b>\$5,588,820</b>	<b>\$4,026,086</b>	<b>\$41,000,000</b>
EM&V for Statewide Programs	\$3,138,245	\$3,057,550	\$973,088	\$632,746	\$7,801,628
Energy Division Special Projects	\$677,347	\$318,698	\$133,880	\$97,473	\$1,227,398
Energy Division Operating Costs	\$262,887	\$196,383	\$81,826	\$58,904	\$600,000
Other Studies	\$2,297,079	\$2,001,457	\$965,991	\$814,491	\$6,079,018
<b>Total EM&amp;V and Other Projects</b>	<b>\$6,375,557</b>	<b>\$5,574,088</b>	<b>\$2,154,784</b>	<b>\$1,603,614</b>	<b>\$15,708,044</b>
<b>TOTAL APPROVED IN D.03-12-060</b>	<b>\$235,442,493</b>	<b>\$162,714,801</b>	<b>\$60,760,703</b>	<b>\$47,651,726</b>	<b>\$506,569,724</b>

## Allocation of 2004-2005 PGC Funds in this Decision

IOU Statewide Programs	\$7,886,788	\$16,408,744	\$4,036,666	\$5,996,450	\$34,328,648
IOU Local Programs	\$10,569,988	\$1,000,000	\$0	\$0	\$11,569,988
IOU Partnership Programs	\$0	\$651,023	\$5,332,662	\$1,223,000	\$7,206,685
<b>Total IOU Programs</b>	<b>\$18,456,776</b>	<b>\$18,059,767</b>	<b>\$9,369,328</b>	<b>\$7,219,450</b>	<b>\$53,105,321</b>
Non-utility Programs	\$2,976,123	\$1,236,500	\$6,022,846	\$650,240	\$10,885,709
Reserved fee for IOU Contract Administration for Non-IOU programs (5%)	\$148,806	\$61,825	\$301,142	\$32,512	\$544,285
<b>Total Non-IOU Programs</b>	<b>\$3,124,929</b>	<b>\$1,298,325</b>	<b>\$6,323,988</b>	<b>\$682,752</b>	<b>\$11,429,994</b>
EM&V for Statewide Programs	\$908,101	\$619,379	\$292,000	\$322,000	\$2,141,480
<b>Total EM&amp;V and Other Projects</b>	<b>\$908,101</b>	<b>\$619,379</b>	<b>\$292,000</b>	<b>\$322,000</b>	<b>\$2,141,480</b>
<b>TOTAL FUNDING IN THIS DECISION</b>	<b>\$22,489,806</b>	<b>\$19,977,471</b>	<b>\$15,985,316</b>	<b>\$8,224,202</b>	<b>\$66,676,796</b>
<b>GRAND TOTAL</b>	<b>\$257,932,300</b>	<b>\$182,692,272</b>	<b>\$76,746,020</b>	<b>\$55,875,928</b>	<b>\$573,246,520</b>

**Notes:**

- [1] San Diego Gas and Electric Company (SDG&E): Pursuant to Advice Letter (AL) 1483-E effective April 1, 2003, approved by the Commission on April 15, 2003.
- [2] Pacific Gas & Electric Company (PG&E): Net of Carry-over Funds from Program Year (PY) 1998 - PY 2002 and PG&E's two Motions to shift funds to PY 2003 programs and additional Energy Division staff costs, totaling to \$3,975,838. Includes Gas Consumption Surcharge Funds remitted to the State Board of Equalization per Resolution G-3303

## **II. Background**

D.03-08-067 solicited energy efficiency program proposals from any interested individual or entity and set forth several parameters for that solicitation. That order addressed programs that would be funded through the public goods charge or “PGC” and the criteria for evaluating related proposals. The Commission originally received more than 400 separate proposals for more than 200 distinct programs. Proposals came from utilities, non-profit organizations, government agencies and businesses. These proposals sought PGC funding in amounts exceeding \$1 billion plus an additional \$245 million for procurement portfolio programs from Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E).

Commission staff reviewed these proposals and recommended funding for some, generally using the evaluation criteria adopted in D.03-08-067. Staff used judgment with regard to creating program portfolios for each utility, seeking to balance the various policy criteria set by the Commission and considering the funds available. D.03-12-060 describes the staff’s evaluation process in more detail.

D.03-12-060 held back \$67 million<sup>1</sup> in anticipated PGC funds in order to reevaluate program proposals with the following characteristics: (1) proposals that did not receive at least 60 points for which staff recommended funding; (2) those that received over 60 points for which the staff did not recommend

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<sup>1</sup> The order refers to holding back \$64 million but the intent of the order was to hold back \$67 million. The discrepancy results from an inadvertent error in the tables that listed \$3 million for an SDG&E Partnership Program that the order did not fund.

funding; (3) proposals funded by D.03-12-060 but at lower levels than proponents originally proposed; and (4) proposals that were submitted after the deadline or which would have been submitted after the deadline if staff had granted requests for late submittals. D.03-12-060 stated these programs “may merit further consideration” in light of the criteria adopted in D.03-08-067.

D.03-12-060 invited proponents of these kinds of proposals to submit additional support for their proposals, or to submit modified versions of late-filed proposals by January 16, 2004. D.03-12-060 stated our intent to reconsider those program proposals no later than February 26, 2004.

In response to D.03-12-060, the Commission received supporting documents for several proposals on January 16, 2004 and Commission staff evaluated these proposals.

### **III. 2004-05 Energy Efficiency Program Proposals for Funding with PGC Revenues**

This decision adopts most of staff’s initial recommendations for funding the \$67 million in 2004 – 2005 programs that D.03-12-060 directed staff to reexamine. The programs selected today have undergone Commission staff analysis, and staff’s recommendations are consistent with our policy statements in D.03-08-067.

In this instance and in D.03-12-060, we have strived to create a transparent process for the evaluation of program proposals. Such transparency includes the task of explaining to program proponents how their proposals will be judged. To this end, we have maintained the level of discretion the Commission has used in the past while simultaneously clarifying the scoring criteria. Our objective has been to minimize subjectivity in developing a



successful statewide energy efficiency program portfolio that serves many competing objectives. As we stated in D.02-05-046,

We rated each program according to the criteria described below. In summary, the best proposals/proposers: offer comprehensive service; provide a local presence; have a demonstrated history of success; are innovative; reach the hard-to-serve or niche markets not already served; reach a market that the IOUs did not propose to serve this year; serve a geographic area needing programs; advance emerging technologies; provide persistent, long-term energy savings; deliver services to small business; present the program honestly and credibly; propose reasonable budgets; leave lasting change or infrastructure at the local level; provide maximum benefits to program participants rather than being heavy on overhead; help solve transmission constraints; and work closely with or represent existing city and county governments and institutions.

Additionally, we seek to clarify certain language in D.03-12-060. In this decision, the Commission stated,

“We decline in this decision to approve for 2004-2005 funding the approximately \$64 million in programs that did not receive at least 60 points in the staff’s primary analysis, but that were included on the staff’s short list. Using the careful criteria we adopted in D.03-08-067, the primary analysis concluded that these programs provide relatively lower overall value to California, and should not be funded for the 2004-2005 period. We are not prepared at this time to deviate from that criteria by funding proposals that fall outside those guidelines.<sup>2</sup> At the same time, we believe that these and other proposals not adopted today may merit further consideration.”<sup>3</sup>

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<sup>2</sup> The specific programs are identified elsewhere in this decision.

<sup>3</sup> D.03-12-060, p. 13

This language may inadvertently suggest that the last step in staff's analysis was to rank and score program proposals. It may also imply inadvertently that we expected staff to score programs and then automatically reject any program proposals that scored below a threshold of 60 points. This procedure, however, is not what we anticipated in D.03-08-067 and would have been contrary to selection criteria adopted in D.03-08-067 for assembling the energy efficiency program portfolio. Specifically, D.03-08-067 states,

“Staff will review proposals and recommend the design of the portfolio as follows: (1) Staff will evaluate each qualifying proposal using the primary and secondary criteria set forth below; (2) The proposals will be ranked in order of their scores on the primary criteria to create a short list of highest ranking proposals; (3) The proposals in this short list will then be ranked based on their combined primary and secondary criteria scores; (4) Finally, a portfolio of programs will be assembled from this smaller pool of proposals. Staff will go through the ranked list of proposals from top to bottom and will consider each proposal's fit into the portfolio. The portfolio must adhere to available funding by utility territory and have a total resources cost (TRC) ratio greater than one, and we ask staff to compile a balanced portfolio of programs that balances the following goals:

- Maximized energy savings
- Strong cost effectiveness
- Equitable geographic distribution
- Diversity of target markets
- Equity by rate class

- Equity between gas and electric program offerings and energy savings
- Diversity of program offerings
- Multiple languages offered to program participants”<sup>4</sup>

If staff had created an artificial threshold score and relied solely on that score for choosing among programs, they would have deviated from Commission direction in D.03-08-067 and past Commission’s decisions<sup>5</sup> that have assumed that staff and the Commission would apply judgment and discretion in order to advance the state’s energy efficiency goals and avoid duplicative programs.

D.03-12-060 did not create a minimum scoring criteria, but directed staff to re-evaluate certain programs to assure they would be consistent with the Commission’s explicit objective to create a balanced energy efficiency portfolio for 2004 – 2005.

It is impossible to fund all programs that have applied for funding. Because funding is limited and we have to make difficult choices, some approved program budgets were reduced and other program proposals did not receive funding at all. Given the reality of a limited budget, we have used our discretion and judgment to create a cost-effective, fair portfolio of programs, consistent with the criteria we adopted in D.03-08-067 and our current policies.

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<sup>4</sup> D.03-08-067, pp. 22-23

<sup>5</sup> D.01-11-066 and D.02-05-046

With that as background and consistent with D.03-12-060, Commission staff re-evaluated the certain types of energy efficiency program proposals: (1) those that did not receive at least 60 points for which the staff recommended funding; (2) those that received over 60 points for which staff did not recommend funding; (3) those for which we allocated funding in D.03-12-060 at levels less than originally proposed; and (4) those that the staff rejected because they were submitted late or were not submitted because staff would not accept them late. The Commission received letters providing additional support for 77 program proposals.

The programs we adopt today are found in Attachment 1. In addition to the 16 programs that the Commission staff had initially recommended for funding in D.03-12-060 but were not authorized because the Commission requested further evaluation, we authorize two-program proposals for funding that were not previously recommended by Commission staff. Those programs are Residential Duct Services provided by Energy Analysis Technologies and the Green Schools Program by the Alliance to Save Energy.

The information received for these two programs clarified the scope and management of the programs and convinced us that they merit continued funding.

Attachment 2 describes the programs we fund in this order in more detail.

#### **IV. Energy Efficiency Program Administration**

Consistent with the intent of D.03-12-060, all programs for which funding is awarded today are subject to the evaluation, measurement and verification procedures and all other reporting, administrative and contracting requirements adopted in D.03-12-060. Parties implementing the proposals

funded in today's order shall refer to that order and comply with its requirements.

**V. Petition to Modify D.03-08-067 Filed by Robert Mowris**

On October 23, 2003, Robert Mowris (Mowris) filed a petition to modify the ALJ's September 12, 2003 ruling adopting utility EM&V plans for program year 2003. Subsequently, on January 22, 2004, Mowris informed the assigned ALJ by electronic communication that he wished to withdraw this pleading because the concerns it raised had been addressed by the utilities. This order grants Mowris' request to withdraw his October 23, 2003 pleading.

**VI. Petition to Modify D.03-08-067 Filed by Women's Energy Matters (WEM)**

WEM filed a petition to modify D.03-08-067 on September 26, 2003, arguing that the Commission's interpretation of AB 117 is incorrect and that its alleged preference for funding utility energy efficiency programs is unlawful.<sup>6</sup> The petition also raises concerns that the process for reviewing energy efficiency program proposals for 2004-05 funding is "unclear" and "unworkable." It objects to the decision's treatment of Efficiency Partnership on the basis that it grants "obvious favoritism."

SCE filed a response to WEM's petition. SDG&E, SoCalGas and PG&E filed a joint response to WEM's petition. All four utilities object to WEM's proposals to change the energy efficiency program selection process and its

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<sup>6</sup> WEM originally tendered the pleading as an application for rehearing. The Commission filed the pleading as a petition for modification because it was filed after the statutory deadline for filing an application for rehearing, which is 30 days following the issuance of the relevant Commission order.

interpretation of AB 117. SCE states that the Commission's order represents a lawful exercise of the Commission's discretion and that the use of PGC funds for a cost-effective portfolio of programs satisfies AB 117's requirement that energy efficiency programs be cost-effective.

D.03-08-067 set forth the process and criteria for allocating public goods charge revenues to energy efficiency programs. It solicited the ideas and formal proposals of any individual, company or other entity in that regard. In so doing, it arguably implicated AB 117, which addresses certain criteria and procedures for allocating PGC funds to energy efficiency programs.

This Commission interpreted AB 117's relevance to energy efficiency programs in D.03-07-034. WEM and Residential Energy Service Companies United Effort (RESCUE) filed timely applications for rehearing of that order. Their applications for rehearing raised a variety of issues, including those raised by WEM in its September 26, 2003 petition challenging the Commission's interpretation of portions of AB 117. On January 8, 2004, the Commission responded to the applications for rehearing of D.03-07-034 filed by RESCUE and WEM. D.04-01-032 denies the applications for rehearing and affirms the Commission's interpretation of those portions of AB 117 that WEM challenges in its September 26, 2003 petition.

Since the filing of WEM's September 26 petition, the Commission issued D.03-12-060, which applied the procedures and criteria adopted in D.03-08-067 and to which WEM objects. On January 22, 2004, WEM and RESCUE filed applications for rehearing of D.03-12-060. These applications for rehearing are currently pending before the Commission.

Because D.04-01-032 has addressed the issues raised in WEM's petition to modify D.03-08-067 and the Commission may address those issues in response to

WEM's pending application for rehearing of D.03-12-060, this order denies WEM's petition to modify D.03-08-067.

**VII. Joint Motion for Reconsideration of the  
ALJ Rulings of October 16, 2003 Filed by  
Community First Coalition and Women's  
Energy Matters (CFC/WEM)**

CFC/WEM filed a motion on October 23, 2003 seeking reconsideration of the ALJ's ruling, dated October 16, 2003. CFC/WEM object to the ALJ's approval of an energy efficiency program pilot plan (Pilot) developed by the City of San Francisco (City) and PG&E in compliance with D.03-04-055. That order approved \$16 million in funding for the pilot program in San Francisco, which PG&E and the City stated would reduce peak demand by 16 MW. The ALJ's ruling dated October 16, 2003 approved the Program Implementation Plan (PIP), allowing PG&E and the City to implement the pilot funded by D.03-04-055.

Normally, the Commission does not consider interlocutory appeals to ALJ rulings. In this case, we address the matter here because CFC/WEM's motion raises concerns that the pilot program approved in the PIP relies too heavily on compact fluorescent lighting (CFL), frustrating the Commission's intent that the program promote energy savings during peak periods. CFC/WEM argue that the reliance on CFLs reduces peak savings in summer to 7.1 MW and peak winter savings to 5.6 MW in 10 years. The reason for this reduction in peak savings, according to CFC/WEM, is that the CFLs last only two years. This circumstance makes the entire program not cost-effective and more expensive than alternatives for reducing peak demand in San Francisco. CFC/WEM presents a proposal for a more cost-effective program with alternatives costing about \$1300-1400 per average kW compared to its estimated cost of the San Francisco Pilot of about \$1,800 per kW over the same period. CFC/WEM asks

that PG&E and the City be required to work with local communities in designing a more cost-effective program.

PG&E and the City respond that the CFL program will contribute to long term savings because they anticipate an effective useful life of eight years rather than the two years CFC/WEM assumes. They argue that CFC/WEM's cost-effectiveness analysis differs from the one used in the PIP, showing a cost of under \$1,000 for summer peak and winter peak periods.

Normally, the Commission does not consider interlocutory appeals to ALJ rulings. In this case, we address the matter here because CFC/WEM's motion raises important issues and demonstrates considerable knowledge of energy efficiency measures and analysis of costs and benefits. We appreciate CFC/WEM's concerns about the use of CFLs in the pilot program. We concur with its concern, expressed in the ALJ's August 20, 2003 ruling, that PG&E and the City inappropriately assume energy savings for periods that extend well beyond the life of the CFLs they install. PG&E and the City's cost-effectiveness calculations assume savings that may never occur and, where they do, are not necessarily attributable to the pilot program. This assumption artificially inflates the forecast cost-effectiveness of the pilot program and it should not be applied to the final evaluation of the program's success.

Beyond that, we must rely on our staff experts to advise us and the ALJ about the wisdom of program elements and consistent with the decisions that grant associated funding. In this case, the PIP is approved and the program will go forward. We will evaluate the success of the pilot program and consider its performance if parties seek future funding.



**VIII. Motion to Mandate Release of Scoring Information Filed by SESCO**

On January 14, 2004, SESCO, Inc. filed a “Motion to Mandate Energy Division Release of Scores and To Extend Due Date for Submittal of Additional Support for PY 2004-05 Energy efficiency Programs.” SESCO’s motion asserts that letters sent to parties who did not receive funding for 2004-05 in D.03-12-060 do not provide scores or adequately explain the reasons that they did not receive funding. SESCO sought an extension of time to submit additional information to support 2004-05 program proposals from January 16, 2004, as required by D.03-12-060 to three to five business days following receipt of information from staff about why D.03-12-060 did not allocate funding the associated to subject energy efficiency program proposals.

D.03-12-060 directed Commission staff to send letters to parties whose energy efficiency program proposals were not funded, identifying their scores and “an explanation of the development of the score.” Our objective was to provide parties with some insights about staff’s recommendations. Because of the limitations imposed by time and the press of other work, we did not expect staff to provide an elaborate justification for its recommendations or describe changes to each proposal in ways that would assure future funding.

In response to our directive, the Commission sent letters to 84 program proponents. It would not have been possible for our staff to provide elaborate explanations for each associated program to without compromising the management of our energy efficiency programs generally. We understand that SESCO may not have been satisfied with the extent of the information provided in the staff’s letters regarding SESCO’s energy efficiency program proposals. Moreover, our staff tried to provide insights to program proponents and implementers designed to improve program elements and delivery, and even if

they could not satisfy SESCO's expectations in this case, the Commission staff complied with our directive. We therefore deny SESCO's motion.

#### **IX. Minor Errors in D.03-12-060**

Ordering Paragraph 13 of D.03-12-060 directs the utilities to provide a plan for evaluation activities related to local and statewide programs, among other things. D.03-12-060 established a procedure for evaluating local programs separately from statewide programs. Ordering Paragraph 13 is therefore in error and its reference to local program evaluation plans should be deleted. We make that correction in this order.

This order also corrects several tables from D.03-12-060 that included inadvertent errors. Those tables are attached to this decision (Attachment 3) and highlight those values that are corrected. Associated text in D.03-12-060 is corrected consistent with these tables.

D.03-12-060 inadvertently omitted an ordering paragraph to authorize the utilities to spend procurement funds on programs approved by D.03-12-060 for the procurement portfolio established in D.02-03-062. This decision includes such an ordering paragraph.

#### **X. Comments on Draft Decision**

The Commission mailed the draft decision of Administrative Law Judge Kim Malcolm to the parties on January 27, 2004 in accordance with Pub. Util. Code § 311(e) and Rule 77.6 of the Rules of Practice and Procedure. Parties filed comments on February 16, 2004 and reply comments on February 21, 2004 .

#### **XI. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner. Meg Gottstein and Kim Malcolm are the assigned Administrative Law Judges in this proceeding.

**Findings of Fact**

1. D.03-12-060 stated the Commission's intent to allocate \$67 million in PGC funds to efficiency programs and evaluation of them for two years during 2004-05. Consistent with D.03-12-060, Commission staff reevaluated certain program proposals and recommend those identified in this decision and Attachments 1 and 2.

2. D.03-12-060 intended that all programs funded herein would be subject to all of the evaluation criteria, contracting, evaluation and other administrative requirements adopted in D.03-12-060.

3. The programs adopted for funding herein meet the evaluation criteria adopted in D.03-08-067 and affirmed in D.03-12-060.

4. The bridge funding ordered in D.03-12-060 is no longer required. Any amount of bridge funding spent on programs authorized herein should be considered part of the budgets of those programs for 2004-05.

5. Mowris notified the ALJ on January 22, 2004 that he wished to withdraw his October 23, 2003, petition to modify the ALJ's September 12, 2003 ruling in this proceeding regarding the utilities' 2003 program EM&V plans.

6. WEM filed a petition to modify D.03-08-067 on legal issues that have been resolved in D.04-01-032 and are the subject of WEM's application for rehearing of D.03-12-060.

7. CFC/WEM's October 23, 2003 motion for reconsideration of the ALJ's October 16, 2003 ruling identifies certain potential infirmities with the City of San Francisco and PG&E's cost-effectiveness analysis of some elements of the City's pilot program. The motion does not, however, demonstrate that the program should be redesigned.

8. Commission staff provided adequate information to program proponents, consistent with D.03-12-060.

9. Ordering Paragraph of D.03-12-060 inadvertently refers to local program evaluation plans, which are treated differently from statewide programs.

10. The tables in D.03-12-060 included several inadvertent minor errors.

11. D.03-12-060 inadvertently omitted an ordering paragraph to authorize the utilities to spend procurement funds on programs approved by D.03-12-060 for the procurement portfolio.

12. In using its judgment to develop a proposed energy efficiency program portfolio, Commission staff followed the Commissioner's direction in D.03-08-067.

### **Conclusions of Law**

1. The Commission should adopt the \$67 million in program funding and modifications set forth in Attachments 1 and 3.

2. The Commission should require parties for whom funding is authorized herein to comply with all contracting, evaluation, reporting and other administrative requirements adopted in D. 03-12-060.

3. The bridge funding adopted in D.03-12-060 should be discontinued effective today and consistent with Conclusion of Law 4 in D.03-12-060. Funding for related programs should end except to the extent it is expressly authorized herein for 2004-05.

4. The petition of Mowris to modify the ALJ's September 12, 2003 ruling in this proceeding should be withdrawn, consistent with the wishes of the movant.

5. WEM's September 26, 2003 petition to modify D.3-08-067 should be denied because it raises legal issues that have been resolved and are subject of a pending application for rehearing of D.03-12-060 filed by WEM.

6. CFC/WEM's October 23, 2003 motion for reconsideration of the ALJ's October 23, 2003 ruling should be denied.

7. The cost-effectiveness analysis of the pilot program implemented by PG&E and the City of San Francisco, which was approved in the ALJ's ruling dated October 16, 2003, shall assume only those energy savings from CFLs associated with the CFLs actually installed under the program.

8. SESCO's January 14, 2004 motion for more information from Commission staff regarding program proposal evaluations should be denied.

9. D.03-12-060 should include express authorization for SCE, PG&E and SDG&E to spend procurement funds on energy efficiency programs, consistent with D.03-12-060 and D.03-12-062.

10. Ordering Paragraph 13 of D.03-12-060 should be modified to remove reference to local program evaluations.

11. The tables in D.03-12-060 should be corrected as set forth herein.

12. D.03-08-067 did not establish a program proposal evaluation process that assumed proposals would be funded if and only if they received numerical scores exceeding 60 points.

### **INTERIM ORDER**

#### **IT IS ORDERED** that:

1. Funding is hereby authorized for programs and in amounts set forth in Attachment 1 of this decision for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) and specified other entities. Parties receiving funding are eligible for no more than

the amounts awarded herein. Payments are contingent on reasonable program performance.

2. The “bridge funding” authorized by Ordering Paragraph 3 of D.03-12-060 is terminated, effective today. Any amount of bridge funding spent on the programs authorized herein should be considered part of the approved budgets for those programs.

3. The programs for which funding is adopted herein as described in Attachment 2 are subject to the requirements of D.03-12-060 as set forth in Ordering Paragraphs 5-13 and Ordering Paragraphs 15-19.

4. Ordering Paragraph 13 of D.03-12-060 is modified as follows:

“Utilities shall jointly develop, file, and serve, within 60 days of the effective date of this order, in consultation with the Energy Division and through available informal mechanisms, a plan for the conduct of evaluation activities related to their statewide programs and overarching studies. The utilities should make demonstrable efforts to expand and vary the entities with which they contract to perform these duties. We delegate authority to the assigned ALJ, in consultation with the Energy Division and the Assigned Commissioner, to review and approve the plans for the statewide evaluation studies, overarching studies, and the selected contractors for these studies.”

5. Attachment 3 to this order corrects inadvertent errors in D.12-03-060.

6. The joint motion of CFC/WEM for reconsideration of the ALJ’s October 16, 2003 ruling is denied.

7. The final evaluation of the pilot program implemented by PG&E and the City of San Francisco, for which funding was approved in D.03-04-055, shall not assume cost savings for CFLs beyond the useful life of the CFLs installed as part of the pilot program.

8. SESCO’s January 14, 2003 motion is denied.

9. Robert Mowris & Associates' October 23, 2003 petition is withdrawn.

10. D.03-12-060 is modified to include the final ordering paragraph:

“PG&E, SCE and SDG&E are authorized to spend the amounts identified and for programs identified in Attachment 3 of D.03-12-060. The utilities shall implement those programs using procurement funds identified in D.03-12-062 and otherwise consistent with this order.”

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.